

April 2015

Practices & Policies on Bullying & Harassment: COLLECTIVE AGREEMENT BETWEEN KW ANTLEN POLYTECHNIC UNIVERSITY AND KWANTLEN FACULTY ASSOCIATION

Follow this and additional works at: <http://thekeep.eiu.edu/jcba>

 Part of the [Collective Bargaining Commons](#), and the [Higher Education Commons](#)

Recommended Citation

(2015) "Practices & Policies on Bullying & Harassment: COLLECTIVE AGREEMENT BETWEEN KW ANTLEN POLYTECHNIC UNIVERSITY AND KWANTLEN FACULTY ASSOCIATION," *Journal of Collective Bargaining in the Academy*: Vol. 0, Article 41.

Available at: <http://thekeep.eiu.edu/jcba/vol0/iss10/41>

This Proceedings Material is brought to you for free and open access by The Keep. It has been accepted for inclusion in Journal of Collective Bargaining in the Academy by an authorized editor of The Keep. For more information, please contact tabruns@eiu.edu.

COLLECTIVE AGREEMENT

BETWEEN

KWANTLEN POLYTECHNIC UNIVERSITY

AND

KWANTLEN FACULTY ASSOCIATION

APRIL 1, 2012 – MARCH 31, 2014

- i) written notification of the intent to continue these benefits is provided to the Human Resource Services Department six (6) weeks prior to date of early retirement;
 - ii) the participant maintains B.C. residency; and
 - iii) the participant prepays all premium costs.
- * Coverage may be under a separate group for retirees at a reduced level.

Note: Pensioners who decline the Extended Health benefit coverage at retirement will not be eligible for coverage later unless they can prove continuous coverage under an extended health care plan (e.g. coverage under spouse's plan).

22.08 FINANCIAL COUNSELLING

Each faculty member who is offered an early retirement incentive is entitled to receive personal financial counselling.

A lifetime total of three (3) hours of consultation is available and the fees for such consultation(s) will be paid by the Employer to a maximum of \$240.00 per faculty member on invoice or production of receipt by the faculty member. Each faculty member will be free to schedule these consultations in whatever manner is most beneficial or convenient to that faculty member.

In addition, each faculty member who is offered early retirement incentive is eligible to attend an Employer sponsored pre-retirement planning workshop.

ARTICLE 23 – DISCRIMINATION AND HARASSMENT

23.01 NO DISCRIMINATION

The Employer and the Union recognize the right of employees to work in, and students to study in, an environment free from discrimination.

The Employer, except in instances where there is a bona fide occupational requirement, shall not refuse to employ, continue to employ, advance, or dismiss a person, nor shall it discriminate against that person in respect of employment or condition of employment on the basis of: race, colour, ancestry, place of origin, political belief, religion, age, mental or physical disability, sex, marital status, family status, sexual orientation, or conviction for a criminal or summary conviction charge that is unrelated to employment.

The foregoing shall not be interpreted as prohibiting the parties from entering into an employment equity program.

23.02 NO HARASSMENT

a) Statement of Principle

The Employer and the Union recognize the right of all employees to work in, and students to study in, an environment free from harassment.

The parties agree that harassment is a violation of a person's rights, dignity and personal well-being. Where a complaint of harassment is substantiated, appropriate disciplinary measures, up to and including dismissal, are supported and endorsed by the parties.

b) Definitions

i) Harassment

"Harassment" means sexual harassment or personal harassment, as defined in this Article.

ii) Sexual Harassment

Sexual harassment is defined as unwelcome conduct and/or comments of a sexual nature that detrimentally affect the work environment or lead to adverse job related consequences.

Sexual harassment includes, but is not limited to, sexual advances and requests for sexual favours, such as:

- An implied or expressed promise of reward for complying with a sexually oriented request;
- A reprisal, or an implied or expressed threat of reprisal, directed at one's employment for refusing to comply with a sexually oriented request;
- A denial of opportunity, or the express or implied threat to deny an opportunity, for refusing to comply with a sexually oriented request.

Other examples of sexual harassment include:

- Verbal harassment or abuse, such as sexist jokes told or carried out after having been advised that the conduct is embarrassing or offensive, and sexist jokes that are by their nature embarrassing or offensive;
- Unwelcome and unnecessary remarks about a person's body, clothing or sexual activities;
- Displays or distribution of pictures, posters, calendars, objects, literature or other materials that are sexually suggestive, sexually demeaning or pornographic;
- Unwanted and unnecessary touch, patting, pinching, or other suggestive physical contact;
- Sexual looks, such as leering and ogling with sexual overtones;
- Suggestive comments or gestures;

- Compromising invitations;
- Constant brushing up against a person's body.

The legitimate study, display, use or distribution of topics, material or art forms of a sexual nature that are within appropriate academic norms is not considered sexual harassment.

iii) Personal Harassment

Personal harassment is defined as repeated offensive comments and/or actions that, by a reasonable standard, create an abusive or intimidating work environment.

Personal harassment may occur as a single incident or over a period of time. A combined series of incidents – of which any one in isolation would not necessarily be considered harassment – may also constitute harassment.

Comments or actions that serve a legitimate, work-related purpose shall not be deemed to constitute personal harassment under this article.

Examples of personal harassment include, but are not limited to:

- Physical threat, intimidation, or assault or unwelcome physical contact such as touching, patting, pinching, and punching;
- Implied or expressed threat or reprisal, or denial of opportunity for refusal to comply with a request which serves no legitimate work-related purpose;
- Display or distribution of pictures, posters, calendars, objects, literature or other materials that are racist or, that are, by a reasonable standard, considered derogatory to a particular person or group of persons.

The legitimate study, display, use or distribution of topics, material or art forms that are within appropriate academic norms is not considered personal harassment.

23.03 COMPLAINT PROCEDURES

a) Informal Resolution

The parties agree that, where mutually agreeable, they may endeavor to resolve complaints of harassment or discrimination informally, prior to accessing the procedures outlined below.

b) Union Representation

In the event that a faculty member is the subject of a complaint under this Article, the faculty member shall have the right to know what allegations have been made against him/her, and shall have the right to Union representation at all meetings, interviews, and hearings where the faculty member's presence is requested by management in connection with the disposition of the complaint.

Faculty member complainants shall also have the right to Union representation at all meetings, interviews and other proceedings where the complainant's presence is requested in connection with the disposition of the complaint.

c) Right to Legal Counsel

The Union is the exclusive bargaining agent for the bargaining unit employee and as such has the exclusive right to represent the employee in all matters pertaining to his/her terms and conditions of employment, including matters that may lead to discipline by the Employer. An individual bargaining unit employee has no right to be represented by legal counsel in connection with an allegation of harassment or discrimination under this Article.

d) Confidentiality

Any complaint of discrimination or harassment will be kept confidential except as is necessary to investigate and resolve the issue. Investigators will stress the confidentiality of the investigation with the person(s) interviewed.

Employer and Union representatives in the course of dealing with a complaint of discrimination or harassment shall have due regard for the privacy and confidentiality of any and all persons involved in the complaint.

e) Formal Complaint

A complaint alleging discrimination and/or harassment must be made in writing to the University President or his/her designate, and must include the names of the complainant and the respondent, a description of the relevant facts (including dates, times and places), the names of any witnesses, and the remedy the complainant is requesting. Copies of the complaint will be forwarded to the respondent and the Union.

All formal complaints under this Article shall be initiated within six (6) months of the event. In the case of a series of events, the complaint shall be filed no later than six (6) months after the last event in the series on which the complaint is based.

The limitation period may be extended if the delay was incurred in good faith or if the delay does not result in substantial prejudice to any of the involved individuals.

f) Mediation

When a complaint is received by the Employer involving an individual covered by this collective agreement, the parties may initiate a mediation procedure at the bargaining unit level. The mediation process is the recommended avenue of resolution.

Mediation is consensual, and will require the agreement of the complainant and the respondent to use the following process:

- i) the parties will discuss the nature of the complaint and agree upon who will conduct the mediation;
- ii) all communications during the mediation will be without prejudice;
- iii) the mediation process and resolution will be kept strictly confidential by all participants;
- iv) where a resolution is reached, the complainant and the **respondent** must agree in writing to the resolution and the matter will then be considered concluded;
- v) no record of the mediation except the written agreed resolution will be placed on an employee's file. The written resolution will be removed from the employee's file after 12 months unless there has been a subsequent complaint of harassment against the employee within the 12 month period.

g) Investigation

Where either the complainant or the respondent does not agree to mediation, or no resolution is reached during the mediation, the complaint will be referred either to a mutually agreeable internal investigator, or to an external investigator selected from the following list:

Rebecca Frame
Irene Holden
Deborah Lovett
Ana Mohammed
John Sanderson
Anita Braha

An investigator will be appointed within ten (10) working days of referral.

The referral shall include a copy of the written complaint, and should, where possible, include a written response from the respondent. The referral should be assembled by the Employer and forwarded to the investigator with a copy sent to the Union.

The appointment of an investigator does not preclude an investigator from mediating the dispute where possible up to the time of submission of the Investigator's report to the parties pursuant to this Article.

If it is determined necessary to separate the work locations of the complainant and the respondent while the complaint is being investigated, it is agreed that the complainant will not be moved against his/her wishes.

No information relating to the personal background or lifestyle of the complainant, or the respondent, shall be admissible during the investigation process.

h) Terms of Reference of the Investigator

- i) The mandate of the investigator will be to ascertain facts.

- ii) The report of the investigator will be given, in confidence, to the Union and the Employer. It is the responsibility of the Employer to forward a copy of the report to the complainant and the respondent. The Employer will state, in a covering letter, that the report is confidential.
- iii) The report should refer to individuals involved by code only. However, a reference key will be provided to the Employer and the Union for internal use. This practice should be repeated at any subsequent arbitral proceeding.
- iv) The report will not be introduced as evidence or have standing in any arbitration, or other legal procedure. This does not preclude the parties from reaching an Agreed Statement of Fact based upon facts in the report in preparation for an arbitral proceeding.

v) Reliance on Report of Third Party Investigator

Despite 23.03(h)(iv), the Employer is entitled to rely on the fact of mediation or the report of a third party investigator as evidence that may mitigate liability in a proceeding that follows receipt of the third party investigator's report.

The Employer is entitled to rely on the investigator's report as evidence that it acted in good faith in any disciplinary action that it undertook following receipt of the third party investigator's report where the issue of good faith is raised by a grievor or the Union.

- vi) The investigator will not be compellable as a witness in any arbitration or other legal procedure which may result from the investigation.
- vii) The investigator will conclude her/his work within ten (10) working days of appointment and will render a report within a further five (5) working days. These timelines may be extended if deemed appropriate by the parties. If requested by the investigator, the Employer will provide meeting space and contact information about persons to be interviewed.
- viii) The investigator may, as part of her/his report, make recommendations for resolution of the complaint.
- ix) The investigator's report will not be placed on an employee's file.

23.04 FINDINGS

- a) The Employer will make a written determination based upon the facts and recommendation, if any, within ten (10) working days of the receipt of the investigator's report. If necessary, this timeline may be extended by mutual agreement between the parties.
- b) The determination will:

- i) state the action(s), if any, to be taken or required by the Employer; and
- ii) include, where appropriate, a statement of exoneration.

23.05 RIGHTS OF THE PARTIES

Should a complainant file a complaint under the provisions of the Human Rights Code, it is understood that the Human Rights Code complaint will be set aside until such time as the procedures under this Article have been completed.

Where an allegation includes both complaints under the Human Rights Code and a personal harassment complaint, the local parties may agree to have the investigator investigate all of the complaints, in order to relieve against expense and duality of process.

Nothing in this Article restricts:

- a) The Employer's right to take disciplinary action;
- b) The Union's right to grieve such disciplinary action or to grieve an alleged violation of this Article.

23.06 FALSE COMPLAINTS, BREACHES OF CONFIDENTIALITY AND RETALIATORY ACTION

Frivolous, vexatious or malicious complaints of harassment or discrimination, breaches of the confidentiality provisions of this Article, or retaliation in respect of a complaint, may result in discipline.

Should retaliation be alleged following the filing of a complaint, the investigator may deal with that allegation and make a finding.

23.07 ADMINISTRATION

The parties will meet as necessary to facilitate the administration and other aspects of the application of this Article including issues arising under 23.08 below.

23.08 RELATION TO OTHER AGREEMENTS

Where a complaint under Article 23 involves individuals who are covered by another collective agreement, the parties will meet to clarify and agree upon a procedure.

